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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,860	05/28/2002	Stig Willner	CU-2691 RJS	6710
26530	7590	02/10/2004	EXAMINER	
LADAS & PARRY 224 SOUTH MICHIGAN AVENUE, SUITE 1200 CHICAGO, IL 60604			KOKABI, AZADEH	

ART UNIT                    PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/009,860	WILLNER ET AL. <i>Ch</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Azy Kokabi	3743 <i>11</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 May 2002.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 28 May 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8 and 9</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show straps between iliac rolls and the abdominal pad. The drawings filed 05/28/02 show that straps (4) are parallel to the iliac rolls (see figure 3) and perpendicular to the abdominal strap. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because the iliac rolls (#3) in figure 1 has two references numbers, (#3 and #4). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Information Disclosure Statement***

3. The listing of The Sweden patent in page 2 of specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
4. The information disclosure statement (IDS) submitted on 03/04/02 and 03/10/02 was considered by the examiner.

***Claim Objections***

5. Claim 1 is objected to because of the following informalities: “beingf” should be changed to --being--.

Appropriate correction is required.

***Minor Claim Suggestions By Examiner***

6. The body of the claims of the present invention is understood by the Examiner, however the following changes are recommended to improve clarity. The claims have been examined on the merits including the suggested changes below.

It is suggested that “the applied pressure” in claim 1 be changed to --applied pressure-- or --an applied pressure--.

It is suggested by the examiner that claim 14 be changed from “pad is shaped after the lower ribs” to --pad is configured to conform to the shape of lower ribs.”

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Willner et al (U.S. Patent No. 4,821,739).

Willner discloses a spinal brace (#1) having an abdominal pad (#26), a posterior frame (#2), and lateral iliac rolls (#28 and see at least column 4, lines 4-26 and see figure 2). The abdominal pad and the posterior frame are interconnected by connection means (#27-#29). The

connection means comprises iliac rolls (#28) and straps (#27, #29) which are connected to the abdominal pad. The posterior frame (#2) of Willner has an adjustable lumber pad (#16) provided with pressure setting means (#22) for setting the distance between the lumbar pad and the posterior frame, thereby enabling an adjustment of applied pressure (see column 3, lines 59-68 through column 4, lines 1-3).

In reference to claims 2-4, the lumbar pad is adjustable in height (see grooves #24, which enable movement of the lumbar pad #16 and screw #22). The pressure setting means is a screw jack (#22). The screw jack comprises a vertically placed adjusting crew. It is vertically placed compared to the horizontal back beam (#5).

In reference to claim 5, the screw is adjustable in the lateral side direction (see figure 2). The posterior frame of Willner includes two vertical struts (see two sides of #2), a cranial horizontal support (#4 or #3), and a caudal horizontal support (#3 or #4). Both cranial and caudal horizontal supports are adjustable in height (see grooves and screws (#10, 11, and # 8, 9).

As best understood by the examine, the straps are provided between the iliac rolls and abdominal pad. Furthermore, the straps are provided between the horizontal supports and abdominal pad (see figures 1-3).

In reference to claims 11-13, Willner discloses that the abdominal pad flexible plastic, which is inherently lightweight. Figure 3 shows that the abdominal pad is slightly concave. The pad is shaped to cover the abdomen.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3743

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willner ('739).

As previously, discussed in paragraph 5 above, Willner further discloses all the limitations as set forth, however Willner fails to specify the shape of the cranial border to the anterior abdominal pad.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided for an abdominal pad that is shaped after the lower ribs, since it has been held that a change in the shape of the element involves only routine skill in the art (see MPEP 2144.04). It would have been obvious to have provided for a abdominal pad shaped after the lower ribs in order to comfortably fit the abdominal pad to a user's anatomy.

### ***Conclusion***

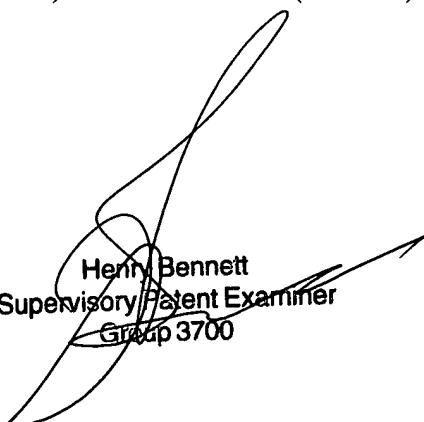
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references cited disclose various feature, which are similar to those disclosed by Applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azy Kokabi whose telephone number is (703) 306-4154. The examiner can normally be reached on Monday- Friday, 6:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AK



Henry Bennett  
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